RECENT CASES

AGENCY — NATURE AND INCIDENTS OF THE RELATION — SALE BY AGENT TO HIMSELF. — The defendant employed the plaintiff as agent to sell land at a certain minimum price, the agent to have as commission everything above that price. The plaintiff tendered the price himself and asked for a conveyance, but the defendant refused. The plaintiff now seeks specific performance. *Held*, that specific performance will be granted. *Hulton* v. *Sherrard*, 150 N. W. 135 (Mich.).

An agent owes the highest duty of loyalty to his principal, and therefore an agent to sell cannot himself become the buyer. *McNutt* v. *Dix*, 83 Mich. 328, 47 N. W. 212; *Porter* v. *Woodruff*, 36 N. J. Eq. 174; *Rockford Watch Co.* v. *Manifold*, 36 Neb. 801, 55 N. W. 236. It has been suggested, however, that where the price is fixed and leaves the agent no discretion he may act for both buyer and seller. See *Empire State Ins. Co.* v. *American Central Ins. Co.*, 138 N. Y. 446, 449, 34 N. E. 200, 201. Whatever may be the merits of such a doctrine, the principal case seems unimpeachable. By express agreement the agent was to act for himself after the price stipulated for by the principal was reached, and accordingly, he had no interest against his duty. To say that the contract should be voidable because the agent might be tempted to sell to an unwelcome purchaser would be entirely too fanciful an objection. *Synott* v. *Shaughnessy*, 2 Ida. 111, 7 Pac. 82.

BANKS AND BANKING — COLLECTIONS — LIABILITY OF COLLECTING BANK IN GARNISHMENT PROCEEDINGS. — The defendant deposited in the A bank for collection a draft drawn on the plaintiff payable to the bank. The A bank credited the amount to the defendant's account, which was already overdrawn, and sent the draft to the B bank which collected from the plaintiff. The plaintiff then sued the defendant and garnished the B bank. The A bank intervened and claimed the fund. *Held*, that the A bank is entitled. *Scott* v. *McIntyre Co.*, 144 Pac. 1002 (Kan.).

The question whether the deposit of paper in a bank for collection creates the relation of debtor and creditor, or of agent or trustee, is largely one of fact. One view is that *primâ facie* the bank becomes an agent for collection. *Balbach* v. *Frelinghuysen*, 15 Fed. 675. See 18 HARV. L. REV. 300; 28 *id.* 205. The weight of authority, however, appears to be that, at least under the circumstances of the principal case, the relation is that of debtor and creditor. *Metropolitan National Bank* v. *Loyd*, 90 N. Y. 530; *Burton* v. *United States*, 196 U. S. 283. Under the latter view the decision is clearly right, for the bank takes the draft as its own and is entitled to the proceeds. On the former hypothesis, the situation is somewhat more complicated. Some courts hold that the collecting bank is a sub-agent, and give the depositor a direct legal right against it. *First National Bank of Circleville* v. *Bank of Monroe*, 33 Fed. 408. See *San Francisco National Bank* v. *American National Bank*, 5 Cal. App. 408, 90 Pac. 558. On the other hand, it is sometimes said that the depositor has only an equitable right. See *Naser* v. *First National Bank*, 116 N. Y. 492, 499, 22 N. E. 1077, 1078. This would seem the correct view, for the depositary bank is in effect the trustee of the claim for the depositor. See 18 HARV. L. REV 300. The Kansas statute, however, allows garnishment of credits in which the principal defendant may be interested up to the extent of his interest. KAN. GEN. STAT., § 5835. This would seem to cover a case where the interest is equitable. But since the depositor must work out his rights through the depositary bank, the garnishing creditor would on any theory be postponed to